

IN THE SUPREME COURT }
OF PAPUA NEW GUINEA }

CORAM: PRENTICE, J.
Wednesday,
24th May, 1972.

BETWEEN: THE DIRECTOR OF DISTRICT
ADMINISTRATION

Appellant

AND: THE CUSTODIAN OF EXPROPRIATED
PROPERTY

and

THE ADMINISTRATION OF THE TERRITORY
OF PAPUA AND NEW GUINEA

Respondents

Re Kurikiki Island
(Appeal No.17 of 1965)

1972
May 10
KIETA

This is an appeal against the final order of the Land Titles Commission made on 19th February, 1965 under the New Guinea Land Titles Restoration Ordinance.

May 24
PORT
MORESBY

Prentice,
J.

Under a substituted notice of appeal, dated the 19th day of October, 1971, it was argued that the Commissioner had exceeded his jurisdiction and erred in law, by making the said final order, when Sec. 37 of the abovementioned Ordinance had not been complied with. It was agreed by counsel, that should I find this ground of appeal established, I should remit the matter to the Commission so that enquiry as to native ownership claims could be investigated.

On 17th November, 1952 the Custodian of Expropriated Property applied for the "restoration" of a freehold title to (inter alia) the land being a trading station, 2.50 hectares, Kurikiki (Kokahiki) - "an island at the easternmost of the Duterui group, about three miles from Arawa Bay" - being the land registered in Vol. 1 Fol. 10 Solomon Islands Ground Book.

In a sheet annexed to the Custodian's claim it was noted that Kokahiki and certain other grouped "trading stations" had been "sold as Lots 125, 126, 132 and 138 Third Group Catalogue of Sales"; and that Lot 125 Kokahiki was sold to a T.E. Ebery; - Burns Philp becoming the owner of Ebery's interest on a sale in a writ of execution.

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Island

Prentice,
J.

Burns Philp had also lodged a claim dated 4th September, 1952 to a freehold "on Kokahiki Island near Kieta - Portion No. 125 - approx. 2.5 hectares". It is clear that Burns Philp's claim was also in relation to that land entered in the Ground Book Vol. 1 Fol. 10. In a letter supporting the claim dated 6th October, 1952 the land claimed was referred to as "Portion No. 125 on Kokahiki Island near Kieta".

On a Land Titles Commission card index there is a reference to "Kurikiki (Kokahiki) Trading Station. Portion No. 125 Location an island area 2.5 hectares Ground Book S.I. 1/10th (part)". (Folio 10 includes another island Tukanupe - also 2.5 hectares.)

On 22nd September, 1955 the Land Titles Commission issued a provisional order declaring entitlement in fee simple in the Custodian to "Kurikiki or Kokahiki Island, District of Bougainville, being the whole of the said island above highwater mark". (The underlining is mine.)

After a reference by the Commissioner of Titles on 7th September, 1956 to the then Director of Native Affairs, a Sec. 36 certificate was issued on 23rd October, 1956 by the Director, in the usual form, certifying "no native or native community was or asserts that he or it was on the appointed date entitled to any customary rights in respect of the parcel of land the subject of provisional order made on 22nd September, 1955." Under the sub-title "Description of Land" the further words appear "Portion 125 on Kokahiki Kieta - Bougainville approximately 2.5 hectares" (the underlining is mine).

The appellant contends that the inclusion of this further matter of description, namely the words "Portion 125 on", and the elimination of the phrase beginning "being the whole" invalidates the certificate as it renders uncertain the land to which it is intended to apply; and because it does not apply to the land the subject of the provisional order. If it is not a certificate as to the land claimed, then (a) no certificate under Sec. 17 of the Ordinance having been issued and (b) no question of native rights having been referred to the Commission, and (c) no

certificate (i.e., no proper certificate) having been issued under Sec. 36; no valid final order could be made.

Regulation 18 under the New Guinea Land Titles Restoration Ordinance, requires that a Sec. 36 certificate shall be in or to the effect of Form 13. Form 13 as printed to the addendum to the Regulations has a footnote - "Here set out description of land in same terms as in the notice listing the provisional order". I am satisfied that the certificate in question is to the effect of Form 13.

It is clear from the Land Titles Commission file that no survey of the island was ever made. The use of the phrase "Portion 125" appears to have been imported from the Land Titles Commission card which in turn translates the phrase "Lot 125" originally appearing in the Custodian's Catalogue of Sales. There is nothing in the file to suggest that the use in the description of the words "Portion 125" and the omission of the phrase "being the whole", necessarily or inferentially should refer to anything less than the whole of Kurikiki Island. To my mind no uncertainty appears - the "Portion 125" is the whole of the island. I do not consider that the inclusion of the phrase "Portion 125" and the omission of the phrase referred to, in the Schedule description, would amount to any more than a procedural irregularity in that the footnote to Form 13 has not been followed; an irregularity which did not prejudice the appellant or anyone else, and did not invalidate the final order when made (cf. Re Tol Extended (1)).

I am satisfied the certificate was intended to and did by description, relate to the land claimed, and complied with Sec. 36. I am satisfied the Commission made no error in law and did not exceed its jurisdiction. I dismiss the appeal. I confirm the Commission's order.

Solicitor for the Appellant : W.A. Lalor, Public Solicitor
Solicitor for the Respondents: P.J. Clay, Crown Solicitor